UNITED STATES PATENT AND TRADEMARK OFFICE

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UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte ROBERT LESLIE VAN OOSTENBRUGGE,
PAULUS GEORGE MARIA DE BOT,
and ASTRID MATHILDA FERDINANDA DOBBELAAR

_____

Appeal 2007-4286
Application 09/832,719[1]
Technology Center 2100

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Decided:[2] May 22, 2009

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Before LEE E. BARRETT, LANCE LEONARD BARRY, and
HOWARD B. BLANKENSHIP, *Administrative Patent Judges.*

BARRETT, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134(a) from the final

rejection of claims 1-20. We have jurisdiction pursuant to 35 U.S.C. § 6(b).

We affirm-in-part.

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[1] Filed April 11, 2001, titled "Method and Apparatus for Adapting a
Graphical User Interface."

[2] The two-month time period for filing an appeal or commencing a
civil action, as recited in 37 C.F.R. § 1.304, begins to run from the decided
date shown on this page of the decision. The time period does not run from
the Mail Date (paper delivery) or Notification Date (electronic delivery).

STATEMENT OF THE CASE

The invention

          The invention relates to a method and apparatus having a presentation means for presenting a graphical user interface and for applying and changing a "skin." A "skin" is defined as "An alternative graphical interface for an operating system (OS) or a software program. A skin customizes the look of the OS or program but does not affect its functionality." *Microsoft Computer Dictionary* (5th ed. Microsoft Press 2002). "A skin may consist of a user interface layout, which defines a specific background, colors and shapes, and the position and nature of control buttons in the graphical user interface." Spec. 1: 12-14. Skins were known in the prior art. Skins can be downloaded from the Internet and stored locally. The disadvantage of the prior art is that the user has to perform actions to change skins, e.g., the user has to locate skins on a web server, select one and download it to his personal computer, and then apply it to the graphical user interface (Spec. 1: 20-24).

          The invention provides for skins to be changed without an explicit user request. A skin change can be initiated by a skin change command from a remote server. A plurality of skins may be stored locally and one skin selected by the skin change command. Skins may be changed depending on the content or other parameters such as performer. Skins may also be changed based on a user profile.

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The claims

Claims 1 and 9 are reproduced below:

1. An apparatus comprising presentation means for presenting a graphical user interface within which information is displayed and skin means for applying a skin defining an artistic background comprising one of a background color, a background shape or a specific orientation of controls to the graphical user interface so as to influence the look of the graphical user interface, characterized in that the skin means are adapted to change a currently applied skin in response to an event not originating from a user request to change the currently applied skin.

9. A method of generating a command to an apparatus, the apparatus having presentation means for presenting a graphical user interface within which information is displayed and skin means for applying a skin defining an artistic background within which data can be displayed to the graphical user interface so as to influence the look of the graphical user interface, characterized in that the command comprises a skin change command remotely transmitted to the apparatus for changing a currently applied skin in response to a parameter related to displayed information.

The references

Monteiro	US 5,778,187	Jul. 07, 1998
Dobronsky	US 6,784,900 B1	Aug. 31, 2004
		(filed Aug. 13, 1999)

The rejections

Claims 9-11 and 19 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Dobronsky.

Claims 1-8, 12-18, and 20 stand rejected under 35 U.S.C. § 103(a) as unpatentable over Dobronsky and Monteiro.

DISCUSSION

Claim form

We assume Appellants have verified that the claims in the appendix to the Brief are correct. It is noted that claim 5 recites "as defined in any one of Claims 1" and claim 14 recites "as defined in any one of Claims 13," which are indefinite because only one claim is referred to in each case.

In claim 2, we presume "or" should be "for."

Anticipation

Claim 9

Issue

The issue, based on Appellants' contentions, is: Does Dobronsky teach "generating a command to an apparatus . . . [1] the command comprises a skin change command remotely transmitted to the apparatus for changing a currently applied skin [2] in response to a parameter related to displayed information" (brackets added)?

Facts

Dobronsky teaches a method and system for on-demand addition of graphic and other information to the browser's toolbar, where the information can be a skin (Abstract).

Dobronsky teaches that a plug-in is installed in the browser and information is added by "action of said plug-in" (col. 2, ll. 18-19).

Dobronsky teaches that a web site being accessed by a web surfer may offer a skin download having an advertisement (col. 5, ll. 56-67).

Analysis

1.

We first consider the limitation that "the command comprises a skin change command remotely transmitted to the apparatus for changing a currently applied skin." The Specification describes that a "skin change is initiated by a skin change command received from the remote server" (Spec. 5: 12-13). The Examiner correctly interprets that the limitation does not require that the command is remotely *initiated* and does not distinguish over a user requesting a skin change from a remote site which site then sends a command to change a currently applied skin (Ans. 15). Nevertheless, there must be a remote command, which is ultimately the issue for this limitation.

The Examiner refers to column 5, lines 33-41, as teaching the change in skin being effected by a user selecting a skin for download and installing it in the toolbar area, and finds that column 5, lines 55-67, column 6, lines 38-41, and column 8, lines 9-23, teach a service website providing a command to "dynamically update" the display of a skin in a toolbar in response to the current website navigated to by the web surfer (Final Rej. 3; Ans. 4, 13). The Appellants argue that Dobronsky "does _not_ make any disclosure or suggestion for a response to occur to the current website that is being navigated by the web server [sic] as alleged by the examiner" (Br. 7).

The Examiner's finding of a remote command issued in response to the current website navigated to by the web surfer are not supported by Dobronsky. Dobronsky teaches that selection of a skin by a user "will eventually result in the installation of the skin in the toolbar area of the

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browser, as shown in FIG. 2" (col. 5, ll. 39-41). This, by itself, does not describe a command which causes a skin change. We disagree with the Examiner's finding that a remote command is taught by the description of a website permitting download of a matching skin (col. 5, ll. 56-67). This does not say how the skin is updated. The Dobronsky claim limitations of "allowing said graphic and other information to be dynamically updated according to further information obtained from a web site that is being accessed by said web surfer" (claim 1, col. 6, ll. 38-41) and "dynamically uploading . . . graphic information for display as a skin in the toolbar area of said browser by the action of a module of said plug-in" (claim 25, col. 8, ll. 17-20), indicate that the skin is dynamically updated or uploaded, but do not say this occurs in response to a remote command from the website being accessed by the user, as stated by the Examiner.

The method of downloading a skin image and setting it as the current toolbar's skin is described in Dobronsky at column 4, lines 30-67. A skin image filed is downloaded and stored in BMP format in response to a user selection, the registry keys are changed, and a double F11 command is sent to the active Explorer window to refresh the skin image (col. 4, ll. 59-67), As described, this command is performed by the plug-in module and is not in response to a remote command sent from the website, i.e., Dobronsky teaches "allowing the information to be added to and/or modified in the toolbar area of said browser by the action of said plug-in" (col. 2, ll. 17-19).

Accordingly, Dobronsky does not teach "a skin change command remotely transmitted to the apparatus."

2.

Appellants (Br. 7) argue that the rejection does not address the limitation "in response to a parameter related to displayed information." This limitation refers to the description of an attribute which indicates the genre or other properties of the song and "[i]n dependence on such an attribute, the remote server 101 transmits skin change commands so as to change the applied skin in such a way that it optimally matches the currently played song" (Spec. 5: 16:19). The Examiner notes that claims 1 and 25 recite "dynamic uploading" or "dynamic updating" of a skin according to "further information" obtained from a website that is currently being accessed by a web surfer and finds that "the skin is updated in response to this further information (parameter), related to the website (displayed information)" (Ans. 14). Appellants' previous argument that Dobronsky "does _not_ make any disclosure or suggestion for a response to occur to the current website that is being navigated by the web server as alleged by the examiner" (Br. 7) also applies here.

Claim 25 of Dobronsky describes dynamically uploading graphic information for display as a skin, the graphic information corresponding to a web site being accessed by the web surfer. Claim 1 of Dobronsky recites "further information" obtained from a web site being accessed instead of uploaded graphic information. Both claims relate to uploading a skin from a web site being accessed by a web surfer. We assume that the Examiner interprets "in response to" as broad enough to include in response to user selection. We also assume that the skin (what the Examiner finds to be the

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parameter) is related to the web page of the site being accessed by the web surfer (what the Examiner finds to be displayed information) because, for example, the skin may contain an advertisement of the web page (col. 5, ll. 56-67). However, it is not clear how a skin change command would be transmitted in response to this information, assuming the web site transmits a command. The Examiner seems to read Dobronsky as stating that merely navigating a web site will cause a skin change command, but Dobronsky teaches that the user must actually choose a skin.

Accordingly, Dobronsky does not teach generating a skin change command "in response to a parameter related to displayed information."

3.

Appellants further argue that the limitation of "a graphical user interface <u>within which information is displayed</u> and skin means for applying a skin defining an artistic background within which data can be displayed to the graphical user interface so as to influence the look of the graphical user interface" is "not accomplished by the downloading of a plug-in module to the toolbar area and presenting graphic information for display as a skin in the toolbar area as taught by *Dobronsky et al.*" (Br. 7). It not explained why presenting a skin in a toolbar area does not meet the claim limitation. Thus, this argument is not persuasive.

Conclusion

Dobronsky does not teach "generating a command to an apparatus . . . the command comprises a skin change command remotely transmitted to the

apparatus for changing a currently applied skin in response to a parameter related to displayed information." The anticipation rejection of claim 9 and its dependent claims 10, 11, and 19 is reversed.

Obviousness

Claims 1 and 13[3]

Issue

Does Monteiro teach or suggest modifying the skin change system in Dobronsky so "that the skin means are adapted to change a currently applied skin in response to an event not originating from a user request to change the currently applied skin" in claim 1 and the similar limitation of claim 13?

Facts

Monteiro describes multicasting real-time information over a network, where the information could be audio, video, graphics, or text (Abstract).

Monteiro describes sending side-bar information synchronized with the audio channel. "For example a music program could deliver images of an album cover, the text of song lyrics, or URLs for use by a web browser. The User can preferably choose to have the side-bar information show up *automatically* or be hidden." (Emphasis added.) Col. 7, ll. 50-54.

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[3] Claim 13 is directed to a "graphical user interface." A graphical user interface *per se* would be nonstatutory subject matter under 35 U.S.C. § 101 because it does not fit into any statutory category. Nevertheless, claim 13 recites a "mechanism" for presenting information and a "skin change device" for changing the skin. Thus, we interpret claim 13 to be an "apparatus," which is consistent with dependent claims 14-16 and 18.

Monteiro describes that users are identified to the system, which permits the system to monitor which users are listening to which channels and allows for targeted delivery of advertising content based on user demographic (col. 8, ll. 2-24).

Monteiro describes the user interface with respect to Figure 18. The user screen has three sections: a channel guide (upper left), program guide (upper right), and multimedia frame (lower half of screen). "The multimedia frame provides an integrated web browser that displays information via a series of tabbed sections." Col. 17, ll. 18-19.

Monteiro describes:

> The information contained in the channel guide, program guide, and the tabs of the multimedia frame is dynamically transmitted to the client. For example, if a new channel begins operation, the client application can immediately display it as being available. Furthermore, the tabs displayed can be specifically relevant depending on what song is playing. For example, tabs displaying the album cover, information on the artist, song lyrics, tour dates can be displayed.

Col. 17, ll. 20-28.

Analysis

The Examiner finds that Dobronsky does not describe changing the skin in response to an event not originating from a user request to change the currently applied skin, but that Monteiro teaches changing information in response to a different song being played (Final Rej. 5). The Examiner concludes that it would have been obvious to modify Dobronsky to change

the skin based on an event not originating from a user request to change the current skin in view of Monteiro (*id.*).

Appellants argue that Monteiro relates to information that can be used within a graphical user interface (GUI) and does not relate to changing the skin or appearance of a GUI (Br. 10-12). It is argued that the references can not be combined to perform their intended purposes because Dobronsky provides on-demand graphic information while Monteiro provides multicasting, and multicasting is not compatible with an on-demand system (*id.* at 11). It is argued that a person skilled in the art would not have been motivated by Monteiro to alter the appearance of a GUI because Monteiro does not disclose or suggest alterations to the GUI (*id.* at 12).

The Examiner responds that a skin is an alternative graphic interface as defined in the *Microsoft Computer Dictionary* and Monteiro does teach changing the GUI (Ans. 20-21).

If Monteiro taught changing a skin in response to a song then this would be an anticipation rejection; however, this is an obviousness rejection. Monteiro teaches automatically changing the information sent for display in a GUI in response to changing a song (col. 7, ll. 50-54; col. 17, ll. 20-28). In our opinion, this would have suggested changing other information associated with the GUI, such as the skin in Dobronsky. Since skins are frequently associated with audio interfaces, such as the WinAmp™ audio player noted by Appellants, and since Monteiro describes a user interface for playing audio, this is further reason why one of ordinary skill in the art would have found Monteiro to suggest changing other information

associated with the GUI, such as the skin. The fact that Monteiro is directed to a multicast transmission does not negate its relevant teachings of changing information displayed in a GUI in response to a song, not a user request.

Conclusion

Monteiro would have suggested modifying the skin change system in Dobronsky so "that the skin means are adapted to change a currently applied skin in response to an event not originating from a user request to change the currently applied skin" in claim 1 and the similar limitation of claim 13. The rejection of claims 1 and 13 is affirmed.

Claim 2

Appellants argue that neither Dobronsky nor Monteiro disclose or suggest receiving information from a remote server upon an event comprising a skin change command from the remote server (Br. 13).

We disagree. Both Dobronsky and Monteiro receive information from a remote server. Monteiro changes information displayed in a GUI in response to a new song event, which we concluded would have suggested changing a skin in Dobronsky in response to an event such as a song change as explained in the analysis of claims 1 and 13. Such changing of a skin in the proposed modification would necessarily be in response to a skin change command, just as changing the information in Monteiro must be in response to a change command. The rejection of claim 2 is affirmed.

Claim 3

The Examiner finds that Dobronsky teaches selection of a skin from a plurality of skins at column 5, lines 33-41.

Appellants argue that claim 3 requires that the skin change command include an identification of a skin and the skin means being adapted to apply that skin to the GUI in response to the skin change command, which limitations are not disclosed or suggested (Br. 13).

We agree with Appellants that there is no suggestion of selecting information stored on the apparatus in response to a remote command. Monteiro is relied on for the remote command, but we interpret Monteiro to teach sending the information to be displayed in the GUI along with a command to display the information, and not to send a signal to select information stored at the apparatus. Accordingly, Appellants have shown error in the Examiner's rejection. The rejection of claim 3 is reversed.

Claim 4

Appellants argue that the references do not disclose or suggest the skin change command including a further skin and the skin means being adapted to apply the further skin (Br. 14).

We interpret Monteiro to teach sending the information to be displayed in the GUI along with the command to display the information, i.e., the information to be displayed does not exist at the receiver but must be sent. Thus, Dobronsky as modified by Monteiro would have the skin sent along with the display command. The rejection of claim 4 is affirmed.

Claims 5 and 14

Appellants argue that Examiner states that Dobronsky teaches at column 5, lines 55-67, that a change in displayed skin is affected by further information (a change in the website being visited), but this portion of Dobronsky only teaches that skin can be downloaded from a site and there is no teaching for the event to comprise a change of a parameter of the further information or that it is affected by the further information (Br. 14).

We agree that changing a website in Dobronsky is not an event that causes a change in the skin. However, Monteiro is relied upon in the rejection of claims 1 and 13 for changing information in response to an event which is a change in a song. Monteiro teaches presenting "further information" in the form of audio content and one skilled in the art would have been motivated to present audio information, songs in particular, in Dobronsky in view of Monteiro. Since the song is "further information" and a change in the song is a "change of a parameter of said further information," the combination of Dobronsky and Monteiro meets claims 5 and 14. The rejection of claims 5 and 14 is affirmed.

Claims 6 and 15

Appellants argue that the information delivered by Montiero has no capability to define the event by a change of a parameter of the further information (Br. 15). In response to the Examiner's position that a change in music type or artist is a change in a parameter, Appellants argue that this

does not suggest any alterations in the appearance of the GUI or skin applied to the GUI (*id.*).

We agree with the Examiner that a change in a song (where "further information" is audio) which causes a change in the information displayed in the GUI in Monteiro is an event comprising a change of a parameter of the further information (the audio). Appellants argue that Monteiro has no capability to define the event by a change of a parameter of the further information without explaining why the Examiner is wrong. The rejection of claims 1 and 13 is based on the obviousness of changing skins in Dobronsky based on the same events taught in Monteiro, so the argument that Monteiro does not teach altering the appearance of a GUI does not address the rejection. Thus, applying Monteiro to Dobronsky to change skins in response to a change in song, meets claims 6 and 15. The rejection of claims 6 and 15 is affirmed.

Claims 7 and 16

The Examiner's position is that Monteiro teaches that portions of information can be tailored to the client and when the clients habits change the environment adapts around the client (Final Rej. 7).

Appellants argue that Monteiro teaches that particular advertising can be delivered to the user, but there is no disclosure or suggestion that the environment adapts around the user (Br. 15-16).

Monteiro teaches that the advertising sent to a user with the audio can be targeted based on the user's demographic group (col. 8, ll. 2-14).[4] A demographic group is a "user profile" as broadly claimed since "user profile" is not stated to be specific to an individual user. However, Monteiro does not describe an "event comprising a change of said user profile" or that the user profiles change. We agree with Appellants that Monteiro does not teach that the environment adapts around the client. Accordingly, we will reverse the rejection of claims 7 and 16.

Claims 8 and 17

Claim 8 recites a computer program product which when executed on a computing device causes the computing device to constitute an apparatus as defined in claim 1. Similarly, claim 17 recites a computer program product that executes on a computational device creating the apparatus defined in claim 13. We interpret these to be independent claims in a different statutory category of a manufacture.

The Examiner finds that Dobronsky teaches implementing the apparatus utilizing computer programs at column 5, lines 11-21. Appellants seem to vaguely disagree that the noted portion of Dobronsky is

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[4] Appellants admit that "[i]t is known per se to maintain a user profile which automatically adapts to the user's behavior, by monitoring the user's selection of content, measuring viewing or listening times etc. Such user profiles are then used to advise the user about broadcast content which he is likely to appreciate." Spec. 3: 16-19. The Examiner does not rely on this admission. This admission alone would not fix the rejection.

implemented by a computer, but do not actually deny that Dobronsky is a computer implemented system (Br. 16). In addition, Appellants argue the limitations of claims 1 and 13 (*id.*).

Dobronsky and Monteiro are clearly both implemented on computers and the combination would necessarily have program code for performing the functions of claims 1 and 13, as discussed in connection with that rejection. The rejection of claims 8 and 17 is affirmed.

Claims 12 and 20

Claims 12 and 20 depend upon independent claim 9. Since the rejection of claim 9 is reversed, and since the Examiner's rejection does not rely on Monteiro to cure the deficiencies of Dobronsky, the rejection of claims 12 and 20 are reversed.

Claim 18

The Examiner states that Dobronsky teaches a skin having an artistic background of a cow at column 5, lines 55-67, and Figure 5 (Final Rej. 9).

Appellants argue that these portions of Dobronsky teach that a site can be available to download a skin, but do not teach the combination of claims 13 and 18 (Br. 17).

We concluded that the subject matter of claim 13 would have been obvious over the combination of Dobronsky and Monteiro. Appellants do not address or show error in the Examiner's finding that Dobronsky teaches the limitation of claim 18 that a skin has a background shape. The rejection of claim 18 is affirmed.

CONCLUSION

The rejection of claims 9-11 and 19 under 35 U.S.C. § 102(e) over Dobronsky is reversed.

The rejection of claims 1, 2, 4-6, 8, 12-15, 17, 18, and 20 under 35 U.S.C. § 103(a) over Dobronsky and Monteiro is affirmed and the rejection of claims 3, 7, and 16 under 35 U.S.C. § 103(a) is reversed.

Requests for extensions of time are governed by 37 C.F.R. § 1.136(b). *See* 37 C.F.R. § 41.50(f).

AFFIRMED-IN-PART

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